

ELECTRONIC TRANSACTIONS BILL 2001

Second Reading

Resumed from 1 August.

MRS EDWARDES (Kingsley) [4.03 pm]: I support this legislation. The Bill is essentially law reform, rather than an Act that makes amendments to an Act. I will ask the Attorney when he returns to the Chamber about any other amendments pertaining to the legislation that are required. For instance, in dealing with electronic transactions, documents and the like, the Interpretation Act amended the definition of “document” by way of the further definition of “publication”, and allowed electronic documentation to be accepted under the Evidence Act or any other way that documents and/or publications have been referred to in other legislation.

However, I ask the minister whether any other Acts will require amendment pursuant to this legislation. This Bill was introduced into the Legislative Council last year and was referred to the Legislative Council’s Standing Committee on Constitutional Affairs. I shall refer to that report on the Bill because it succinctly outlines what is referred to in the Bill and gives further information about how the Bill will impact on the community in day-to-day operations. One of the definitions of e-commerce referred to in this Bill was provided by the National Office for the Information Economy, which was quoted in the report as follows -

“In e-commerce, business is communicated and transacted over networks and through computer systems. The most restrictive definition limits e-commerce to buying and selling goods and services, and transferring funds through digital communications. However, e-commerce also may include all inter-company functions (such as marketing, finance, manufacturing, selling, and negotiation) that enable commerce and use electronic mail, EDI, file transfer, facsimile, video-conferencing, workflow, or interaction with a remote computer. E-commerce also includes buying and selling over the World Wide Web and the Internet, transferring electronic funds, using smart cards and digital cash, and doing business over digital networks.”

Therefore, the Bill essentially will provide some confidence and security to the users of all those forms of transactions. Members will be aware of the increasing trend in the use of electronic transactions in a number of ways, not only in commercial businesses but also very much in our private lives.

Page 3 of the report quoted an article in *The Australian Financial Review* of 1 April 1999 as follows -

“The number of Australian companies active in e-commerce is set to explode in the next 15 months with a five-fold increase in active Internet trading sites to take the total to 40 000 by mid-2000.”

I believe that figure has exceeded 40 000. If the more recent reports identified by the Attorney General in his second reading speech can be relied on, that prediction has been well and truly exceeded. The increasing use of and confidence in the Internet and e-commerce by people in Australian households has more than tripled. They are paying bills and transferring funds at a rapid rate, although there have been some hiccups along the way, such as a banking transaction that occurred in the south west earlier this year which was the result of human error and not a problem of e-commerce.

The report on page 4 succinctly outlines the Bill’s intention. It reads -

The Bill seeks to facilitate the development and use of e-commerce by:

recognising that transactions effected electronically are not by that reason alone invalid;

I add, as an aside, that if anything is wrong with a document transferred electronically, such as an invalid contract or a document that is bad in some way, this legislation will not correct it. It will not validate an invalid document. The report continues -

providing for the meeting of certain legal requirements as to writing and signatures by electronic communication;

The criteria to be met for the document to be accepted, not the least of which is consent, are outlined in the Bill. A requirement might remain for a document sent electronically or by facsimile to be followed up by a written document sent by mail, if no consent is given by the other party that it is a valid transaction. Therefore, if someone wants to fax or e-mail a document, consent must be given that it is the appropriate form of medium to be used.

That is a key criterion that is outlined. The Bill also seeks to permit documents to be produced to another person by electronic communication, permit the recording and retention of information and documents in electronic form, provide for the determination of time and place of dispatch and receipt of electronic communications and stipulate when an electronic communication will bind its purported originator. Essentially, it will ensure that

there is encouragement and development of the use of e-commerce, particularly the various mediums for electronically transferring documentation.

The basic rule is that there is reliability and reasonableness. Those are the two key concepts about which people need to be concerned. How will the criteria for a valid transaction, such as a document that requires a signature, be determined? Essentially, if this piece of legislation is required in court, the court will determine whether the contract was entered into in the forms under contract, whether the application was appropriately carried out or whether any other form of documentation, whatever it might be, has been appropriately dealt with when being electronically transferred. It does not deal with the content of the documents; it is just whether it has been effectively entered into by the use of electronic transfer.

Mr McGinty: I apologise for coming in after you commenced your speech. You were posing a question about documents as I came in. I did not get the gist of the question.

Mrs EDWARDES: I started off by referring to the definitions of “document” and “publication” in the Interpretation Act. The definition of “document” does not deal with the electronic transfer of documentation. However, the definition of “publication” in the Interpretation Act refers to electronically transferred documents. Pieces of legislation that use “document” and/or “publication” are covered by the Interpretation Act; therefore, the criteria of whether it has been effectively carried out by way of electronic transfer will be covered by the Electronic Transactions Bill. Will any other Act require amendment as a consequence of electronic transactions? Is the Attorney General looking at allowing any other form of action to be electronically dealt with in some way? Are there any other proposals?

Mr McGinty: The advice that I have received from the people responsible for preparing this Bill - it had its life some time ago under the previous Government - was that no further amendments will be necessary as a consequence of this Bill coming into operation. We are the last State to do it. The people responsible for preparing this Bill would have learnt from the other States if other consequential amendments were necessary. There is none that I am aware of.

Mrs EDWARDES: I note that we are the last State to implement this legislation. However, the Attorney General’s staff have advised me that Tasmania and South Australia are yet to proclaim their legislation. We might get in and not be the last State to have it proclaimed.

Mr McGinty: You are better informed than I am.

Mrs EDWARDES: One never knows. The Bill also provides for regulations. It is proposed to follow on from the Victorian regulations. However, the Attorney General might like to give some thought to further exemptions. The regulations exempt wills, codicils and other testamentary instruments and those documents that require personal service. The former Attorney General, in his presentation to the standing committee looking into this legislation, also talked about those other documents that are entered into on a sole basis, as opposed to those requiring two parties. For instance, a power of attorney or a deed of trust is often effective when the other party is no longer around. We might like to look at and think about a couple of other documents. A single deed or a deed poll, as distinct from a deed of two or more persons, is made by one person and later acted upon by another person. Wills come into existence only after somebody has died. It is similar for codicils and the like. It might be worth considering trusts and powers of attorney, because they do not quite fit into the commercial-transaction-between-parties concept. I do not know why the other States have not gone down that path.

Page 14 of the report quotes Hon Peter Foss, and states -

“I do not think the demand for wills, declarations of trust and powers of attorney to be done electronically will arise; if it did, a method by which to do that will hopefully by then have been worked out, and legislation could be passed. There is no demand, and I do not see why there would be a demand.”

Obviously, it will depend on whether the criteria under the legislation will allow it to happen - that is, consent from both parties - whereas in this instance there is only one party. There is still a concern that e-transactions can be modified far too easily. It cannot be proved that these documents should not be provided with exemptions. If the other party is not around, documents such as powers of attorney and the like cannot be corroborated or checked at any point, particularly those that deal with a person’s property.

Another area that is referred to in the report is one that I bring to the Government’s attention, as it has moved away from producing many reports in hard copy. It has attempted to provide those reports on its web site, which, presumably, makes them available to more people. More people are using the Internet to gain and access information. However, the real threat to electronic transactions is the withdrawal of services, gradual though it might be, from people who do not have computer access. Until we ensure that every household has a computer,

not everybody will be able to access information. The point that documentation is available on the web site and can be easily accessed and downloaded is not necessarily true.

The Attorney General would be aware that I have contacted his office on a number of occasions for hard copies of reports. In fact, I have endeavoured to download reports and make multiple photocopies of them to make them available to people who do not have computer access. I do not know what percentage of households have computers. I know that it is increasing, and that is only in the metropolitan area. Regional and country areas have far less access. The real threat to electronic transactions is the withdrawal of services for people who do not have computer access.

The Liberal Party supports the legislation. We are the last State to take this legislation through Parliament. As such, it is legislation that, hopefully, will provide a greater level of guidance and support to the increasing use of e-commerce by both businesses and households.

MR TRENORDEN (Avon - Leader of the National Party) [4.18 pm]: I will not go through the technical detail as the Opposition's lead speaker has done. Obviously, we are now in a process in which we need to look at electronic transactions. It is overdue. The National Party supports the Bill. I will make a couple of points on electronic transactions.

Four years ago when I was a member of the Public Accounts Committee, we visited Olympia, the capital of Washington State, and I was interested to find that people in that State have the capacity to submit their state tax return online. The terminal we saw was located outside a public building, but there are also terminals in shopping centres. People can use one of those terminals to bring up their previous tax return, submit their figures, and ask the program to submit to them the consequences of the figures that they have put in. People have a remarkable range of opportunities to play around with the figures, but once they push the send button, that is it; they have submitted their tax return.

Microsoft Corporation is based in Washington State, and we went there to talk to Microsoft about this State's going online. Unfortunately, that has not happened, and I hope this Government has a positive attitude about the State's going online. It is important that the people of Olympia can legally submit their tax return by means of an electronic transaction. That has enormous implications for compliance and the cost of compliance. It would be fantastic for small businesses if they were able to bring up their previous tax return in that way and examine it. I was very impressed, and I hope that at some stage we move in that way in the west.

One situation that I believe is very unfortunate - it is only an example, and it has nothing to do with the Attorney General's portfolio - is the presentation of cheques. I am certain I am right in saying that the signatures on cheques are not checked unless the cheque is for \$10 000, or more.

Mr McGinty: I do not know the answer to that.

Mr TRENORDEN: I think that is correct. However, that is not the point I want to make. Two years ago, when the Public Accounts Committee looked at the declining benefits of banking in rural Western Australia - from which two members in this place have benefited - and at community banking, we found that one of the problems was the cost of clearing cheques. Under the old system a cheque had to physically turn up at the bank at which the person's account was held before it could be cleared, and that took two or three days. That is now all done electronically. However, it is interesting that the banks still do not clear cheques for two or three days.

Mr Andrews: Four or five days.

Mr TRENORDEN: That is right. In my view - and I have had a good look at this - that is an extraordinary situation and one that the banks cannot morally defend. The argument of the banks is that although they know electronically as soon as a cheque has been presented whether sufficient funds are in the person's account to honour that cheque, legally they must get the paper copy of the cheque physically back to the branch before they can determine whether it should be honoured or dishonoured. That process can be very expensive for small business and private individuals, and it is wrong. It is wrong because, although it helps the banks to make a lot of money - and members on my left are already nodding their heads - it adds to the difficulty and disadvantage of building societies and credit unions that are not part of the group comprising the big four or five banks that run the cheque exchange company. I make that point to emphasise why we need to move into the electronic world.

As the member for Kingsley said, the words in the explanatory notes are important. The document uses words such as "accessible", "reliable", "integrity" and "identification". Those are key words. I am not saying this Bill is the be-all and end-all. There will be amendments to the way electronic activities are conducted. However, it is important that we start somewhere. Therefore, the National Party supports the Bill.

MR McGINTY (Fremantle - Attorney General) [4.25 pm]: I thank the Leader of the National Party and the member for Kingsley for their contribution to the debate on the Electronic Transactions Bill. This is an

important but uncontroversial piece of legislation, and one that I believe requires a measure of national uniformity in our approach to newly-emerging forms of not only commerce but also the production of documents about a raft of transactions. The member for Kingsley asked two questions that I did not answer by way of interjection. The first was about the regulations that will be made under this legislation with regard to the exclusion of certain documents or classes of documents from the impact of the legislation. Clause 7(3) states -

The regulations may provide that subsection (1) does not apply to a specified transaction or specified class of transactions.

Clause 7(4) states -

The regulations may provide that subsection (1) does not apply to a specified law of this jurisdiction.

As the member for Kingsley correctly pointed out, certain classes of documents, essentially of a personal or unilateral nature, are intended to be excluded by the regulations.

The second issue raised by the member for Kingsley related to the disfranchisement of people who are not computer literate. This issue is of some concern. The member for Kingsley and I recently had discussions about the production of a 200-page document of which she wanted multiple hard copies to distribute to her constituents. It was interesting that the Government arranged to print in hard form only one-third of the number of reports that we might have expected to print three or four years ago because of the capacity of people to access that document electronically. Therefore, it is clear to me that there has been a massive swing by the public towards accessing documents electronically, particularly government reports, experts' reports and things of that nature. That relates to the issue that was raised by the Leader of the National Party; namely, that things are changing at such a pace that people will need to become computer literate if they are to communicate and engage in commerce and other forms of transactions. That may come as a bit of a shock to people of our generation and older, member for Avon, nonetheless, I think it will become a reality of the modern world.

Mr Trenorden: We were told by the justice department in Washington that an electronic signature is far more secure than a personal signature, but it will take people a while to understand that.

Mr McGINTY: That is probably right. I am a recent convert to electronic banking and I am still a bit amazed at it, so it is something that I am slow to pick up on as well.

I appreciate the comments of support for this Bill. Electronic transactions have been occurring throughout the past decade, and this legislation arguably should have been in the Parliament earlier in the piece than today.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate, and transmitted to the Council.